

Assembly Bill No. 2778

CHAPTER 399

An act to add and repeal Section 3254.1 of the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, Committee on Insurance. Unemployment insurance: voluntary plans.

Existing law provides for the payment of disability compensation for the wage loss sustained by an individual unemployed because of sickness or injury, and finances that compensation by means of employee contributions at specified rates to the Disability Fund. Existing law requires the Director of Employment Development to approve any voluntary plan, subject to specified exceptions, for disability if the director finds that there is at least one employee and that specified requirements are met, including, among other things, that the plan will be in effect for a period of not less than one year, and, thereafter, continuously unless the director finds that the employer or a majority of its employees employed in the state covered by the plan have given notice of withdrawal from the plan.

This bill would, through December 31, 2014, allow the director to approve a voluntary plan that is administered by a small-business-3rd-party administrator, as defined, that administers voluntary disability plans on behalf of its clients, subject to specified requirements.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

Small businesses have not had the same access under existing law to the benefits of voluntary plan disability insurance, hereafter VPDI, under the Unemployment Insurance Code as employees of larger employers. Part of the reason for this lack of access is the administrative difficulty and expense associated with the application and ongoing operating compliance with the current law and the Employment Development Department's procedures.

SEC. 2. Section 3254.1 is added to the Unemployment Insurance Code, to read:

3254.1. (a) For the purposes of this section, "small-business-third-party administrator" (hereafter SBTPA), means an applicant that the director finds meets all of the following criteria at the time of application:

(1) The SBTPA administers voluntary disability plans on behalf of its clients pursuant to a written agreement in a form and manner approved by the director.

(2) The SBTPA has at least 1,000 California domiciled clients, 80 percent of whom have fewer than 20 employees.

(3) The SBTPA processes payroll for its California domiciled clients.

(4) The SBTPA offers workers' compensation insurance to its California domiciled clients through an affiliated California domiciled insurance company.

(b) Except as modified by this section, "voluntary plan" shall be defined as, and shall be subject to the same provisions as, a "voluntary plan," as set forth in Chapter 6 (commencing with Section 3251) of Part 2 of Division 1.

(c) The director may approve a single voluntary plan for all of an SBTPA's clients and their employees where all of the following criteria are met:

(1) The plan is administered by the SBTPA.

(2) The plan establishes a master trust account that is administered by the SBTPA, but requires each individual employer that is a client of the SBTPA to have a subtrust account that reflects that client's employees' specific plan contributions and is not commingled with any other funds. The master trust account shall be held in a federally insured bank.

(3) (A) If a voluntary plan does not provide for the assumption by an admitted disability insurer of the liability of the employer to pay the benefits afforded by the plan, the director shall not approve it unless the employer meets the financial security requirements of Section 3258.

(B) In addition to the security required by subparagraph (A), the director may require additional security from the SBTPA, consisting of the same types of financial instruments, and deposited in the same manner as in Section 3258, in an amount determined by the director to be adequate to pay disability claims of the SBTPA's clients' employees should the client's subaccount or the financial security provided in subparagraph (A) be inadequate.

(4) (A) The single voluntary plan will be in effect for a period of not less than one year and, thereafter, continuously, unless the Director of Employment Development finds that the SBTPA has given notice of withdrawal of the plan. The notice filed by the SBTPA shall be filed in writing with the Director of Employment Development and shall be effective on the anniversary of the effective date of the plan next following the filing of the notice, but in any event shall not be less than 30 days from the time of the filing of the notice; except that the plan may be withdrawn on the operative date of any law increasing the benefit amounts provided by Sections 2563 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the withdrawal from the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of that law or change. If the plan is not withdrawn on the 30 days' notice because of

the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to that increase or change on the operative date of the increase or change.

(B) Any individual employer who is a client of the SBTPA, or a majority of that client's employees employed in this state covered by the plan, may also terminate their participation in the plan by giving written notice of withdrawal from the plan to the SBTPA and to the Director of Employment Development not less than 30 days prior to the date of withdrawal.

(5) The rights afforded to the covered employees are greater than those provided for in Chapter 2 (commencing with Section 2625), including those provided for in Chapter 7 (commencing with Section 3300).

(6) The plan has been made available to all of the employees of the employer employed in this state or to all employees at any one distinct, separate establishment maintained by the employer in this state. "Employees" as used in this paragraph includes those individuals in partial or other forms of short-time employment and employees not in employment as the director shall prescribe by authorized regulations.

(7) A majority of the employees of the client employed in this state or a majority of the employees employed at any one distinct, separate establishment maintained by the client in this state have consented to the plan.

(8) If the plan provides for insurance, the form of the insurance policies to be issued has been approved by the Insurance Commissioner and is to be issued by an admitted disability insurer.

(9) The client has consented to the plan and has authorized the SBTPA to make the payroll deductions required, if any, and deposit the proceeds in each client's subtrust account.

(10) The plan provides for the inclusion of future employees.

(11) The amount of deductions from the wages of an employee of any client in effect for the plan shall not be increased on other than an anniversary of the effective date of the plan except to the extent that any increase in the deductions from the wages of an employee allowed by Section 3260 permits that amount to exceed the amount of deductions in effect.

(12) The approval of the plan or plans will not result in a substantial selection of risks adverse to the Disability Fund.

(d) The department may adopt application forms and procedures as deemed necessary to ensure compliance with this section, and shall adopt any application forms and procedures within 60 days of the enactment of this section.

(e) It is the intent of the Legislature in enacting paragraph (3) of subdivision (c) that, in the event of the insolvency of an employer-client of the SBTPA, or of the SBTPA, the disability claims against the subaccount of any employer-client arising prior to the date of the insolvency shall be satisfied by first accessing the security of the SBTPA, as described in subparagraph (B) of paragraph (3) of subdivision (c), rather than satisfying the claims from the Disability Fund.

(f) This section shall remain in effect through December 31, 2014, and as of that date is repealed.

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